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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RICHARD KADREY, *et al.*,

Individual and Representative Plaintiffs,

v.

META PLATFORMS, INC., a Delaware
corporation;

Defendant.

Case No. 3:23-cv-03417-VC-TSH

**JOINT ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

Pursuant to Civil Local Rule 79-5(c) and 79-5(d), Plaintiffs Richard Kadrey, Sarah Silverman, Christopher Golden, Ta-Nehisi Coates, Junot Diaz, Christopher Golden, Richard Greer, David Henry Hwang, Matthew Klam, Laura Lippman, Rachel Louise Snyder, Jacqueline Woodson, and Lysa TerKeurst (collectively, “Plaintiffs”) and Defendant Meta Platforms, Inc. (“Meta”) (collectively, the “Parties”) respectfully request leave to file under seal Exhibit C to the Parties Joint Letter Brief on Meta’s Motion to Compel re: Communications with Third Parties Regarding the Discord Posts, Meta’s Privileged Information, or Plaintiffs’ Claims Against Meta (Dkt. 145).

Specifically, the Parties seek to seal an email from Thomas Heldrup to Plaintiffs’ counsel, Matthew Butterick, titled “Books3 evidence (especially Discord)” dated September 28, 2023, Bates numbered Plaintiff_Discord000022. As discussed below, this document was designated “Highly Confidential – AEO” by Plaintiffs, who assert work product protection over Plaintiff_Discord000022. The Declaration of Aaron Cera and [Proposed] Order is filed concurrently herewith, and the Parties refer the Court to the Joint Letter itself and the supporting evidence attached thereto as further support for this administrative motion.

I. LEGAL ARGUMENT

Though the presumption of public access to judicial proceedings and records is strong, it “is not absolute.” *Nixon v. Warner Commc’ns. Inc.*, 435 U.S. 589, 598 (1978). The Ninth Circuit treats documents “attached to dispositive motions differently from records [*i.e.*, documents] attached to non-dispositive motions.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006); *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098 (9th Cir. 2016). For non-dispositive motions, such as the Parties’ Joint Letter, the “good cause” standard applies. *OpenTV v. Apple*, No. 14-cv-01622-HSG, 2015 WL 5714851, at *2 (N.D. Cal. Sept. 17, 2015); *Kamakana*, 447 F.3d at 1180 (“A ‘good cause’ showing will suffice to seal documents produced in discovery.”). The Federal Rules afford district courts “flexibility in balancing and protecting the interests of private parties.” *Kamakana*, 447 F.3d at 1180; *DSS Tech. Mgmt. v. Apple*, No. 14-cv-05330-HSG, 2020 WL 210318, at *8 (N.D. Cal. Jan. 14, 2020), *aff’d*, 845 F. App’x 963 (Fed. Cir. 2021) (finding good cause to seal “confidential business and proprietary information”).

Plaintiff_Discord000022 was designated “Highly Confidential – AEO” by Plaintiffs under the Stipulated Protective Order entered in this case (Dkt. 90). Plaintiffs assert work product protection over the document and that they have not waived any protection. Plaintiffs further allege that the material is subject to a pending dispute over privilege. Plaintiffs assert that Plaintiff_Discord000022 was returned to Meta pursuant to the Court's Order dated August 22, 2024 (Dkt. 114), which is now being reviewed by Judge Chhabria (Dkt. 125). Meta does not agree with these characterizations, but files this request in deference to Plaintiffs’ “AEO” designation while the parties have an opportunity to discuss the designation.

The Parties have taken care to narrowly tailor this request. They have limited their request to a single document attached as an exhibit to their Joint Letter Brief. The Joint Letter Brief itself and other exhibits attached to it will still be accessible in the public record. Accordingly, the Parties’ sealing request is the least restrictive method of protecting Plaintiffs’ confidential information.

II. CONCLUSION

Pursuant to Civil Local Rule 79-5, a copy of Plaintiff_Discord000022 accompanies this Administrative Motion. For the foregoing reasons, the Parties request leave to file under seal Exhibit C to the Joint Letter Brief on Meta’s Motion to Compel re: Communications with Third Parties Regarding the Discord Posts, Meta’s Privileged Information, or Plaintiffs’ Claims Against Meta.

Dated: September 12, 2024

COOLEY LLP

By: /s/ Kathleen Hartnett

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1 Dated: September 12, 2024

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(h)

I hereby attest that I obtained concurrence in the filing of this document from each of the other signatories. I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 12, 2024

COOLEY LLP

/s/ Kathleen Hartnett

Attorneys for Defendant
Meta Platforms, Inc.